IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3340 of 1991

with

CIVIL APPLICATION No 4688 of 2004

and

CIVIL APPLICATION No 8303 of 2004

For Approval and Signature:

HON'BLE MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KIRIT M.SHAH

Versus

THE STATE BANK OF SAURASHTRA & ANR.

Appearance:

MR BJ SHELAT, SR.ADVOCATE with MR NK MAJMUDAR for the Petitioner

MR AS VAKIL for Respondents Nos. 1-2

CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT

Date of decision: 13/10/2004

ORAL JUDGEMENT

The petitioner, an officer in the respondent State Bank of Saurashtra (hereinafter referred to as "the Bank"), challenges the order of punishment of compulsory retirement from service made on 4th May, 1991.

The petitioner joined the service of the Bank on 2nd May, 1971. He was promoted as officer in Junior Management Grade Scale-'I' on 1st November, 1982. In the month of June, 1983 the petitioner was transferred to Dhrangadhra. The petitioner claimed certain transfer allowance which was the subject matter of scrutiny by the Bank. On 28th March, 1984 a disciplinary proceeding was initiated against the petitioner with respect to false claim for transfer allowance. It was alleged that though the mother of the petitioner had not travelled to Dhrangadhra the petitioner had claimed a sum of Rs.13=60 being the amount of bus fare from Ahmedabad to Dhrangadhra. Though the petitioner had travelled in a truck alongwith his luggage and his wife and son had travelled by bus, the petitioner claimed first class fare for himself and his wife. After holding due departmental enquiry the aforesaid charges were held to be proved. Pursuant to the guilt established against the petitioner, by order dated 28th March, 1985 the petitioner was ordered to be compulsorily retired from service from the date of the service of the order. Feeling aggrieved, the petitioner preferred departmental appeal which came to be rejected on 25th July, 1985. Feeling aggrieved, the petitioner preferred Special Civil Application No.2579/1985 before this Court. The said Special Civil Application No.2579/1985 was allowed on 8th February, 1991 (Coram: C.V.Jani, J.) on the sole ground that the petitioner was not given copy of the report of the Inquiry Officer nor was he given opportunity to meet the finding of guilt recorded by the Inquiry Officer. The Bank was permitted to proceed further with the enquiry after giving opportunity of hearing to the petitioner. The said judgment was challenged before the Division Bench in Letters Patent Appeal No.189/1991. The said appeal came to be allowed on 15th December, 1993 (Coram: B.N.Kirpal, CJ. as he then was and M.S.Parikh, J.). The case was remanded for decision on other points which may be raised.

Pending the said appeal, pursuant to the above

referred judgment dated 8th February, 1991 the Bank proceeded further with the enquiry. The petitioner was given copy of the enquiry report and was allowed to make representation against the said report. After affording opportunity of hearing to the petitioner, by impugned order dated 4th May, 1991, the petitioner was ordered to be compulsorily retired. Feeling aggrieved, the petitioner has preferred the present petition.

Pending the present petition, by order dated 12th April, 2004 (Coram: D.H.Waghela, J.), the petitioner was allowed to make representation with respect to the punishment imposed upon the petitioner. The said representation has been rejected by the Bank. The petitioner has challenged the said decision also.

Learned advocate Mr.Shelat has appeared for the petitioner. He has submitted that the impugned order of punishment has been made by the General Manager of the Bank. He has submitted that the petitioner was promoted as Officer by order made by the Managing Director of the Bank. The Managing Director of the Bank, therefore, is the appointing authority. The order of compulsory retirement made by the General Manager, subordinate to the Managing Director, therefore, is null and void. He has also submitted that while making the impugned order the General Manager sought approval of the Managing Director of the Bank. The Managing Director of the Bank being the reviewing authority, the petitioner's right to apply for review has been infringed.

Mr.Shelat has submitted that he Bank failed to examine material witnesses i.e. the mother of the petitioner and the driver of the truck in which the petitioner was alleged to have travelled to Dhrangadhra or the transporter in whose truck the petitioner is alleged to have travelled. He has also submitted that the Bank elicited certain statement from the mother of the petitioner in absence of the petitioner and without informing the said mother the purpose of eliciting the said statement. The finding of guilt based on such statement is not sustainable. The petitioner is, therefore, required to be exonerated. He has submitted that the finding of guilt is recorded on the basis of 'no evidence'. Therefore also, the said finding is erroneous, bad and illegal.

Mr.Shelat has emphasized on the fact that the allegation was with connection with the petitioner's making false claim for transfer allowance. However, the said claim was not accepted by the Bank. Thus, neither

the petitioner had earned a wrongful gain nor the Bank was put to loss. In absence of actual loss caused to the Bank or wrongful gain earned by the petitioner, the punishment of termination of service by compulsory retirement was uncalled for and unwarranted. If at all the petitioner were found guilty a nominal punishment could have served the interest of justice. He has also submitted that in several matters of the officers/employees of the Bank of making false claim for transfer allowance the Bank has taken a lenient view; has allowed such officers/employees to continue in service with a minor penalty. The petitioner has thus been meted discriminatory treatment and has been imposed harsh and disproportionate punishment of compulsory retirement from service.

In support of his contentions, Mr.Shelat has relied upon the judgments of this Court in the matters of Siddharth Mohanlal Sharma v/s. South Gujarat University [1982(1) GLR 233] and of Ishwarbhai H.Patel v/s. State of Gujarat & others [2000(4) GLR 3053]. He has also relied upon the judgment of the Hon'ble Supreme Court in the matter of U.P.State Road Transport Corporation and others v/s. Mahesh Kumar Mishra and others [AIR 2000 SC 1151].

The petition is contested by the learned advocate Mr.Vakil. He has submitted that under the relevant regulations the General Manager of the Bank was the disciplinary authority and the Chief General Manager, the appellate authority. However, in case of major penalties specified in regulation No.67, the previous approval of the Chief General Manager was required. In consonance with the said regulations one Shri V.B.Parekh, the then General Manager imposed the punishment of compulsory retirement on 26th January, 1985 which came to be approved by the Chief General Manager on 28th March, 1985. After the remand of the case, pursuant to the above referred order dated 8th February, 1991, the disciplinary authority, the then General Manager, imposed the vary penalty of compulsory retirement. However, by then the above referred Shri V.B.Parekh had been appointed as Chief General Manager. Therefore, the approval was sought from the Managing Director, the reviewing authority. On receipt of such approval, by order dated 4th May, 1991, the petitioner was ordered to be compulsorily retired from service.

Mr.Vakil has read out the report of the Inquiry Officer and has submitted that there was sufficient evidence before the disciplinary authority to hold the

petitioner guilty of the charge levelled against him. The said charge has been held to be proved on the basis of evidence other than the statement of the mother of the petitioner. He has submitted that the allegation that the finding of guilt was based on 'no evidence' stands refuted. With respect to the mother of the petitioner, the truck driver or the transporter, Mr.Vakil has submitted that the Bank had produced sufficient evidence to prove the guilt of the petitioner and no further evidence was required. The petitioner also did not find it necessary to examine the said witnesses. If desired, the petitioner could have examined the said persons in his defence which he did not do.

As to the penalty, Mr.Vakil has submitted that there was no charge against the petitioner to have earned wrongful gain or of causing loss to the Bank. The charge precisely was that of making a false claim. The said charge having been proved, the petitioner can be said to have committed financial irregularity with an intention to earn wrongful pecuniary gain. He has submitted that the intention of the petitioner to defraud the Bank by lodging false claim for transfer allowance shall be sufficient to invite punishment of compulsory retirement. The Bank was conscious of the gravity of the charge and, therefore, the Bank had avoided to impose a harsher punishment of dismissal or removal from service.

In support of his arguments, Mr.Vakil has relied upon the judgments of the Hon'ble Supreme Court in the matters of Additional District Magistrate (City) Agra v/s. Prabhakar Chaturvedi and another [(1996)2 SCC 12]; of Disciplinary Authority-cum-Regional Manager and others [(1996)9 SCC 69]; of Narayan Dattatraya Ramteerthakhar v/s. State of Maharashtra and others [(1997)1 SCC 299]; of Tara Chand Vyas v/s. Chairman & Disciplinary Authority and others [(1997)4 SCC 565]; of Regional Manager, U.P.S.R.T.C., Etawah and others v/s. Hoti Lal and another [AIR 2003 SC 1462] and of State Bank of India and others v/s. Samarendra Kishore Endow and another [(1994)2 SCC 537]. He has also relied upon the judgment of this Court in the matter of Mansingbhai Kahalsingbhai & others v/s. Surat Municipal Corporation & others [2000(2) GLR 1061].

In the matter of Siddharth Mohanlal Sharma (supra), the Division Bench of this Court has held that "...The quantum of penalty, if it assumes disproportionate dimensions, may bear upon the reasonableness of the exercise of the disciplinary power and, in the result, it may vitiate, atleast, the ultimate

decision on penalty."

In the matter of U.P.State Road Transport Corporation and others (supra), the Hon'ble Supreme Court has held that, "...the High Court can interfere with the punishment inflicted upon the delinquent employee if, that penalty, shocks the conscience of the Court." The same is the view expressed by this Court in the matter of Ishwarbhai H.Patel (supra).

In the matter of Additional District Magistrate (City) Agra (supra), the Hon'ble Supreme Court upheld the punishment of dismissal imposed upon the delinquent employee who was held to have misappropriated a sum of Rs.21,000=00 temporarily for a couple of months.

In the matter of Disciplinary Authority-cum-Regional Manger and others (supra), the delinquent bank officer was dismissed from service for acting beyond his authority in allowing advances and overdrawals. With respect to the loss suffered by the Bank, the Hon'ble Court observed that, "...The very act of acting beyond authority - that too a course of conduct spread over a sufficiently long period and involving innumerable instances - is by itself a misconduct...No further proof of loss is really necessary though as a matter of fact, in this case there are findings that several advances and overdrawals allowed by the respondent beyond his authority have become sticky and irrecoverable."

In the matter of Narayan Dattatraya Ramteerthakhar (supra), the Hon'ble Court upheld the order of removal from service for misappropriation of public money.

In the matter of Tara Chand Vyas (supra), the challenge to the disciplinary proceeding on the ground that only documentary evidence was produced and no witness was examined was rejected.

In the matter of Regional Manager, U.P.S.R.T.C., Etawah and others (supra), the delinquent bus conductor was found to be carrying ticketless passengers and certain old and used tickets were recovered from him. The Court held that the order of dismissal from service was not disproportionate. It is observed that, "...The penalty was not open to review by the High Court under Article 226. If the High Court reached a finding that there was some evidence to reach the conclusion, it

became unassailable." It is further observed that, "...A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities, have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."

In the matter of State Bank of India and others (supra), the Court has held that as the order of punishment was prior to 20th November, 1990 non-supply of Inquiry Officer's report before imposing penalty would not vitiate the order of punishment. As to the punishment, it has been held that, "...the imposition of appropriate punishment is within the discretion and judgment of the Disciplinary Authority. It may be open to the appellate authority to interfere with it but not to the High Court or to the Administrative Tribunal for the reason that the jurisdiction of the Tribunal is similar to the powers of the High Court under Article 226." It is also observed that, "...the departmental authorities are, if the inquiry is otherwise properly held, the sole judges of facts and if there be some legal evidence on which the findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding ... under Article 226 of the Constitution."

In the matter of Mansingbhai Kahalsingbhai and others (supra), this Court has held that the principle of equality cannot be invoked by a wrongdoer.

In the present case, the petitioner was alleged to have made false claim for transfer allowance on his transfer to Dhrangadhra. The imputation of charge made against the petitioner has been proved by the evidence of the bank officers examined by the Bank. It, therefore,

cannot be said that the finding of guilt recorded against the petitioner was based on 'no evidence'.

As to the statement of the mother of the petitioner recorded by the Bank, it should be noted that the Inquiry Officer, in recording finding of guilt against the petitioner, has relied upon the other evidence available on record. The statement of the mother of the petitioner has not been considered in recording guilt against the petitioner.

As to the examination of the mother of the petitioner, the truck driver or the transporter, it should be noted that in absence of such evidence also there was sufficient evidence before the disciplinary authority to hold the petitioner guilty of the charge levelled against him. If desired, the petitioner could have examined his mother or the truck driver or the transporter in his defence. Neither the petitioner requested the Inquiry Officer to summon the said witnesses nor the finding of guilt recorded by the disciplinary authority can be vitiated for the aforesaid persons were not examined by the Bank.

As the authority of the General Manager to impose penalty upon the petitioner, it should be noted that the petitioner was not a civil servant of the State. The provisions contained in Article 311 of the Constitution of India, therefore, would not be attracted. Under the relevant regulations, for the petitioner the General Manager was the disciplinary authority; the appellate authority being the Chief General Manager. For imposing major penalty, approval of the Chief General Manager was imperative. In the present case, as recorded hereinabove, the Chief General Manager had, being the disciplinary authority at the relevant time, imposed penalty of compulsory retirement on 26th January, 1985. The General Manager had rightly sought approval of the Managing Director instead of the Chief General Manager. I do not see any infirmity in the order of punishment as contended by Mr.Shelat.

This leaves me with the question of adequacy of the punishment. As pronounced by several judgments, it is the disciplinary authority which has exclusive right to select a suitable punishment to be imposed on a delinquent employee. The interference with the said power by the High Court in exercise of power of judicial review under Article 226 of the Constitution of India is

permissible only in case where the punishment imposed by the disciplinary authority/appellate authority is found to be shockingly disproportionate. In the present case, the petitioner had been serving in the Bank for more than 20 years. He was the officer in Junior Management Grade Scale-'I'. Utmost honesty and integrity is required from every employee; higher the post higher should be the responsibility and the greater should be the need for impeccable honesty and integrity. It was fortuitous that the claim for transfer allowance made by the petitioner was not accepted for asking and was put to further scrutiny. The fact that the said claim was not accepted; or that no pecuniary gain was earned by the petitioner; or that no monetary loss was caused to the Bank, were the matters of no consequence. The intention of the petitioner to defraud the Bank with a view to making wrongful monetary gain was established. For such act of misconduct the punishment of compulsory retirement cannot be said to be disproportionate, much less, shockingly disproportionate. In my opinion, in exercise of power of judicial review under Article 226 of the Constitution of India, no interference with the order of punishment is warranted.

In view of the above discussion, the petition is dismissed with cost. Rule is discharged. Interim relief stands vacated. Civil Applications stand disposed of.

(Ms. R.M.Doshit, J.)

/sakkaf